IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 5TH OCTOBER 2007 / 13TH ASWINA 1929

WP(C).No. 29378 of 2004(V)

PETITIONER:

V.P.JOSE, S/O.PAILY, AGED 50 YEARS,
HEADMASTER, AYAMKUDI HIGH SCHOOL, P.O.AYAMKUDY,
KOTTAYAM 686 613, R/A. PUTHIYEDATH HOUSE,
P.O.MANJOOR, KOTTAYAM DISTRICT.

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

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1. THE STATE OF KERALA, REP. BY THE
SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR OF EDUCATION,
KOTTAYAM.

3. THE DISTRICT EDUCATIONAL OFFICER,
KADUTHURUTHY, KOTTAYAM DISTRICT.

4. THE MANAGER, AYAMKUDI HIGH SCHOOL,
P.O.AYAMKUDY, KOTTAYAM 686 613.

5. K.BABY THOMAS, HIGH SCHOOL ASSISTANT,
AYAMKUDI HIGH SCHOOL, P.O.AYAMKUDI,
KOTTAYAM 13.

ADDL.R6 IMPLEADED:

P.P.CHACKO, S/O.PAIO, 53 YEARS OF AGE, RESIDING AT MANJAPRAYIL
MEMURY.P.O., KOTTAYAM.

IMPLEADED AS PER ORDER ON IA.11912/07 DT. 11/9/2007.

BY ADV. SRI.KRB.KAIMAL (SR.)
SRI.N.SUGATHAN
SMT.R.SEEMA
SMT.VARSHA BHASKAR
GOVERNMENT PLEADER SRI.SANDESH RAJA.
SRI.MANUEL KACHIRAMATTAM

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 05/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

APPENDIX (WP.29378/2004)

EXT.P1: TRUE COPY OF ORDER DATED 26/3/2004.

EXT.P2: TRUE COPY OF STAFF LIST AS ON 1/3/2004.

EXT.P3: TRUE COPY FO REPRESENTATION DT. 29/12/2003.

EXT.P4: TRUE COPY FO ORDER DT. 20/9/2004.

EXT.P5: TRUE COPY OF ORDER DT. 16/11/1978.

EXT.P6: TRUE COPY OF JUDGMENT IN OP.631/1985 DT.1/2/1985.

EXT.P7: TRUE COPY OF DECISION IN 2003 (1) klt 998

EXT.P8: TRUE COPY OF JUDGMENT IN WP.19740/2003.

RESPONDENTS' EXHIBITS:

EXT.R5(A): TRUE COPY OF LETTER DT. 19/3/2004.

EXT.R5(B): TRUE COPY OF REPRESENTATION DT. 1/3/2004.

EXT.R5(C): TRUE COPY OF HEARING NOTE DT. 20/3/2004.

EXT.R5(D): TRUE COPY OF ARGUMENT NOTE DT. 6/4/2004.

EXT.R6(A): TRUE COPY OF APPOINTMENT ORDER DT. 7/6/78.

EXT.R6(B): TRUE PHOTOCOPY OF PROCEDINGS OF D.E.O., KADUTHURUTHY.

EXT.R6(C): TRUE PHOTOCOPY OF ABSENT APPLICATION DT. 20/3/2004.

EXT.R6(D): ARGUMENT NOTE DT. 20/3/2004.

EXT.R6(E): TRUE PHOTOCOPY OF A/D.

A.K. Basheer, J.

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W.P(C) No. 29378 of 2004

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Dated this the 5th day of October, 2007.

J U D G M E N T

Is the order of the Government annulling the appointment of the petitioner as Headmaster of Ayamkudi High School in Kottayam District legally valid and sustainable? The above question has come up for consideration in this writ petition at the instance of the Headmaster in the following facts and circumstances.

2. Petitioner got appointment as High School Assistant in the school with effect from July 29, 1997. His appointment was duly approved by the competent authority. While continuing so in the school, the petitioner was deployed to another school consequent to retrenchment with effect from March 29, 2000. He continued on deployment till September 4, 2003. In other words, petitioner was not on the rolls of the parent school with effect from March 29, 2001 till September 4, 2003. After he rejoined the parent school he was promoted as Headmaster in a retirement vacancy with effect from April 1, 2004.

3. Respondent No.5, the rival contestant, got appointment as

High School Assistant initially on July 21, 1977. It is the admitted position that his appointment was approved by the competent authority with effect from August 25, 1977. It is also beyond controversy that he was relieved from service at the end of the academic year on March 31, 1978. But it is the admitted position that he was re-appointed in the school with effect from June 7, 1978. The said appointment was approved too. Thus in effect, respondent No.5 had continuous service only with effect from June 7, 1978 .

4. It is on record that respondent No.5 submitted Ext.P3 representation before the Minister for Education, Government of Kerala on December 29, 2003 with a request to approve his appointment "with effect from 21/7/1977, the date of his joining duty as fully qualified teacher at least for the limited purpose of seniority so as to enable him to get his due chance for promotion as Headmaster in the next arising vacancy." It appears that Ext.P3 representation was forwarded by the Minister to the Department concerned. It was thereafter that the Government passed Ext.P4 order, by which the manager has been directed to fill up the post of Headmaster based on

the rules by displacing the petitioner. According to the petitioner the Government had no right to issue a direction to promote respondent No. 5 as Headmaster. It is the said order which is impugned in this writ petition.

5. It is primarily contended by the petitioner that Ext.P4 order is totally vitiated and illegal inasmuch as the Government in exercise of its revisional jurisdiction had no authority to go into issues or questions which had not been raised in the revision petition. It is further contended that so long as the promotion of the petitioner as Headmaster had not been challenged in the manner known to law, the Government had no jurisdiction, even in exercise of the revisional powers, to annul such promotion. The other contention is that Ext.P4 order has been passed by an officer who had not heard the parties and for that sole reason Ext.P4 is liable to be quashed.

6. Per contra, it is contended by Sri.K.R.B. Kaimal, learned senior counsel for respondent No.5 that the Government in exercise of its power under Rule 92 of Chapter XIV-A KER is authorised to call for the records, if the order of the subordinate authority suffers from

any illegality or irregularity. The order of promotion passed by the manager being totally illegal and against the rules, the Government was justified in setting it at naught. It is also pointed out by the learned senior counsel that respondent No.5 had questioned the entitlement of the petitioner for promotion as Headmaster. He had staked his claim for promotion before the manager, as could be revealed from Ext.R5 (b), even before the petitioner was promoted. Though the Manager had forwarded the said request made by respondent No.5 to the controlling officer, no action was taken thereon. It is thus submitted by the learned senior counsel that the contention raised by the petitioner that the attempt of respondent No.5 to rake up the issue of seniority after a lapse of more than 26 years is wholly untenable. It is the further case of respondent No.5 that petitioner could not have been treated as senior since he was working in another school on deployment for more than 2 ½ years. If the said period of deployment is deducted from the total tenure of service of the petitioner, respondent No.5 ought to have been treated as the next eligible senior teacher for promotion. More importantly, the continuous service of petitioner could have been

reckoned only from 2003 when he rejoined the parent school. In short, the contention of respondent No.5 is that Ext.P4 order is totally valid and legal.

7. As mentioned earlier, respondent No.5 had set the ball in motion through Ext.P3 representation submitted by him before the Minister for Education on December 29, 2003. Evidently the said petition had been treated as a revision petition which culminated in the impugned order. A perusal of Ext.P3 shows that respondent No.5 had only requested the Minister to issue a direction to approve his appointment with effect from July 21, 1977 so that he could claim seniority over the petitioner who was admittedly appointed with effect from July 29, 1977. It is in this context that the petitioner has contended that respondent No.5 had never raked up the question of deployment of the petitioner which was a known issue at that point of time, when respondent No.5 had submitted Ext.P3 before the Minister. But the fact remains that the question of deployment was very much raised as an issue before the Government and all the rival contentions were considered by the Government while issuing Ext.P4 order. The

short question is whether the order of the Government to that extent can be treated as invalid or unsustainable.

8. It is beyond controversy, going by the precedents of this Court, that the period spent on deployment pursuant to retrenchment cannot be reckoned for the purpose of computing the period of continuous service as provided under Rule 37 of Chapter XIV-A KER (See Aleyamma v. Kunjamma Jacob (2007 (1) KLT 1049). But as rightly pointed out by the petitioner, his promotion as Headmaster with effect from April 1, 2004 was never challenged by respondent No.5 as provided under the KER. In this context it is pertinent to note that in Ext.P3 representation respondent No.5 had admitted that he was shown as serial No.5 in the seniority list published by the management as on April 1, 2002, while the petitioner was placed at serial No.3. Therefore the admitted position is that respondent No.5 had not disputed or challenged the seniority of the petitioner as on April 1, 2002. As rightly contended by the petitioner, the question of seniority could not have been raised by respondent No.5 at this belated stage.

9. It may be true that respondent No.5 had staked a claim for

promotion before the manager who in turn had forwarded the said request to the controlling officer. But obviously respondent No.5 had not pursued the matter further. It may yet again be true that the Government had in the meanwhile treated his representation as a revision and invited the parties for hearing. But still there is considerable force in the contention raised by the petitioner that so long as respondent No.5 had not challenged his promotion as Headmaster as provided under the Rules, he cannot be heard to say that the action of the manager was illegal.

10. As rightly pointed out by the petitioner, the prayer in Ext.P3 representation submitted by respondent No.5 before the Minister was only to approve his appointment with effect from July 21, 1977. Obviously such a request could not have been entertained by the Minister or the revisional authority since admittedly the Department had approved his appointment with effect from August 25, 1977. The said order was not challenged by respondent No.5 at any point of time. He had sought to reopen an order and that too through the intervention of the Minister after a lapse of nearly 26 years. But curiously the

Minister is seen to have forwarded it to the Department. When the case came up for hearing before the Department, respondent No.5 raked up the issue relating to deployment of the petitioner could be contended that petitioner could be treated to have re-entered the service of the school only in 2003 after his deployment and therefore petitioner could not have been treated as senior to respondent No.5. Though it is vehemently contended on behalf of respondent No.5 that the Government was justified in considering the above issue invoking its power under Rule 92, I am not persuaded to accept the above contention in the peculiar facts and circumstances of this case, particularly for the reason that Ext.P3 representation was confined only to a request which by itself could not have been entertained under law. If that be the position, the Government ought not to have enlarged the scope of enquiry to an issue which was not raised at all in the so called revision petition.

11. In this context learned counsel for the manager submits that Ext.P3 representation could not have been treated as a suo motu revision since Ext.P4 order was apparently passed at the behest of the

representation submitted by respondent No.5, in which event the Government could not have considered the question of deployment. In this connection learned counsel has invited my attention to a decision of this Court in 1981 KLT 62. He submits that the Government was not justified in revising the order of the manager promoting the petitioner ignoring the period of deployment, if the Government was not exercising the suo motu revisional jurisdiction. According to him, the Government could have only considered the validity or otherwise of the request made by respondent No.5 in Ext.P3 representation. The above contention, in my view, is totally justified in the facts and circumstances of the case. In that view of the matter the Government was not justified in annulling the order of the manager while purportedly exercising the suo motu revisional powers.

12. It is significant to note that the Government has not accepted the prayer made by respondent No.5 to order approval of his appointment with effect from July 21, 1977. The said issue has been conveniently side-tracked by the Government while issuing Ext.P4 order, presumably because the author of the order might have realised

the difficulty in entertaining such a prayer. If the Government had been exercising the revisional power at the behest of respondent No.5 such exercise ought to have stopped there. But the Government proceeded further and considered the question of deployment of the petitioner which it could not have done in the above revision petition.

13. There is another interesting twist to the above scenario due to the intervention of additional respondent No.6. It is contended by him that he being senior to respondent No.5 (which incidentally is not in dispute at all) he ought to be promoted as Headmaster since he is the next in line for promotion as a result of annulment of the order of promotion of the petitioner . It is contended by the learned counsel on behalf of respondent No.6 that the manager has to promote the next seniormost teacher who is none other than respondent No.6 in accordance with the rules as directed by the Government in Ext.P4 order. It is further contended by respondent No.6 that no seniority list as prescribed in Rule 37 of Chapter XIV-A had been prepared or published by the manager. But Ext.P2 shows that respondent No.6 is senior to respondent No.5. Therefore there is some force in the

contention raised by respondent No.6 in this regard. But since I have already found that the Government was not justified in annulling the order of appointment of the petitioner, the contention raised by respondent No. 6 is of no significance , since admittedly he is junior to the petitioner.

14. Having regard to the entire facts and circumstances I have no hesitation to hold that the Government was not justified in revoking or annulling the order of promotion of the petitioner as Headmaster. Therefore Ext.P4 is quashed.

Writ Petition is allowed.

A.K. Basheer,
Judge.

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